

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE A. FINNEGAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Syracuse, NY

*Docket No. 01-174; Submitted on the Record;
Issued August 29, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has sustained an emotional condition in the performance of duty.

On April 29, 1999 appellant, then a 40-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that her anxiety and depression were work related. In a statement dated July 1, 1999, appellant detailed various incidents during the period October 1998 through June 1999 which she believed caused her disability, including harassment and retaliation for whistle-blowing on the improper removal of copper by employees. She also stated that she met with an Investigative Board on April 16, 1999 and that none of her concerns were addressed.

By letter dated June 3, 1999, the Office of Workers' Compensation Programs notified appellant as to the deficiencies in the claim and advised her as to the type of medical and factual evidence required to support her claim.

In a June 21, 1999 report, Dr. Karen K. Heitzman, an attending Board-certified internist with a subspecialty in geriatrics, noted a history of panic disorder, which appellant attributed to the recent "worsening of her depression to a situation and anxiety over her job. Dr. Heitzman also related that appellant believed that she was "the object of a 'witch hunt' in her department."

By letter dated June 22, 1999, the employing establishment denied that appellant's concerns and allegations were ignored and attached a copy of the investigation memorandum.

In a letter dated July 1, 1999, appellant detailed incidents she believed supported her allegation of a hostile work environment due to retaliation for her whistle-blowing and harassment for the period October 16, 1998 through June 10, 1999. The incidents included references to conversations between appellant and other employees, her concern with other employees' use of leave, derogatory comments by coworkers, her supervisor acted indifferently to her after she reported the copper incident, false reports of contact were written about her and that the Union believed a disciplinary action would be issued upon her return to work. She also

alleged that coworkers and a supervisor bypassed her in performing duties she had been performing. Appellant also attached copies of reports and emails regarding some of the incidents involving coworkers.

In a report dated August 9, 1999, Dr. Rosanne O. Ecker, a licensed clinical psychologist, diagnosed appellant's condition as due to her conflict at work. Appellant related to Dr. Ecker that she was suffering retaliation for whistle-blowing and that the employing establishment was unresponsive to her reports of impropriety. She noted that appellant appeared preoccupied with the employing establishment's mistreatment of her, anxiety about going to work or speaking with personnel from the employing establishment and "hopelessness in resolving the conflict."

On October 6, 1999 Mark Kaplan, facility manager, responded to appellant's July 1, 1999 statement by clarifying the situation on some allegations, denying knowledge of other allegations and noting which he believed were accurate.

By decision dated October 14, 1999, the Office denied appellant's claim on the basis that she failed to establish any compensable factor of employment.

Appellant requested an oral hearing by letter dated October 25, 1999, which was held on March 22, 2000.

In a report dated June 7, 2000, Dr. Jud A. Staller, an attending Board-certified psychiatrist with a subspecialty in child psychiatry, noted appellant's allegations regarding problems at the employing establishment and opined that appellant's current disabling depression were due to her employment. Specifically, he attributed her condition to her "allegations of cover-up, ignoring, harassment, threats, retaliatory performance criticisms and reports and reassigning her work to others."

In a decision dated June 26, 2000 and finalized on June 27, 2000, the Office hearing representative affirmed the Office decision dated October 14, 1999.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated October 14, 1999, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors which was affirmed by an Office hearing representative in a decision dated June 26, 2000 and finalized on June 27, 2000. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁸ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.⁹ Appellant alleged that the supervisors and coworkers made statements and

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

engaged in actions, which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued retaliatory performance criticisms and improperly assigned her work duties, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹² However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board must examine whether the employing establishment acted reasonably.¹³ The Board finds that there is no evidence that the employing establishment acted erroneously or abusively in the administrative matters alleged by appellant. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁴

¹⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹¹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The June 26, 2000 decision of the Office of Workers' Compensation Programs finalized on June 27, 2000 is hereby affirmed.

Dated, Washington, DC
August 29, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member